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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/825,526 | 04/02/2001 | Florin Vlad | 81455-4003 | 9771 |

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WINSTON & STRAWN
PATENT DEPARTMENT
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------------------------|-------------------------------------|
| Office Action Summary | Application No. 09/825,526 | Applicant(s) VLAD, FLORIN |
| | Examiner Carolyn A Paden | Art Unit 1761 |
| | | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 21 April 2003.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1, 5 and 6 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other:

Applicant's response to the last office action is sufficient to overcome all of the rejections that were advanced in Paper 4.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-7 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolf (4,835,002).

Wolf discloses microemulsions of oil in water and alcohol. The overall composition is described at column 7 to include 0.01 to 45% oil, 0.1 to 60% surfactant, 20-95% polyol and the balance being water. At column 7, lines 17-42 and column 8, lines 13-19 the action of the polyol as a solvent in oil is suggested. The HLB values useful in the invention range from 10-18 (column 8, lines 66-68). The inclusion of the sorbitan surfactants of claim 6 are suggested in column 5. The oils of claim 5 are indicated at column 3. The use of nonionic hydrophilic surfactants is shown at column 11, in the Table.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf et al (4,835,002).

Wolf discloses microemulsions of oil in water and alcohol. The overall composition is described at column 7 to include 0.01 to 45% oil, 0.1 to 60% surfactant, 20-95% polyol and the balance being water. At column 7, lines 17-42 and column 8, lines 13-19 the action of the polyol as a solvent in oil is suggested. The HLB values useful in the invention range from 10-18 (column 8, lines 66-68). The inclusion of the sorbitan surfactants of claim 6 are suggested in column 5. The oils of claim 5 are indicated at column 3. The use of nonionic hydrophilic surfactants is shown at column 11, in the Table. Claims 3 and 4 appear to differ from Wolf in the suggestion that an antioxidant, such a tocopherol is used. But to use an antioxidant in any food product would have been an obvious way to enhance the storage life of a food product. Also to use tocopherol for its nutritive value as well as its antioxidant properties would have been an

obvious way to doubly fortifying a food product without the expense of the extra ingredient.

With regard to claim 13, the claims appear to differ from the reference in the express statement in the reference that the microemulsion enhances the flavor of a beverage. But this flavor enhance would be expected to result from the inclusion of a flavor or an added flavor to the beverage product of Wolf. It is also appreciated that there is no express statement that the sugar alcohols are the specific alcohols of claim 8. But sugar alcohols are generally discussed at column 8, lines 16-19. The number of compounds that are classified as sugar alcohols is reasonably small. To select the specific alcohols of claim 8 for use in Wolf would have been obvious to one having ordinary skill in the food art with respect to the use of sugar alcohols, in general.

Claims 2 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

Application/Control Number: 09/825,526
Art Unit: 1761

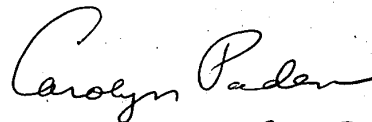
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number is 703-308-3294. The examiner can normally be reached on
Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the
examiner's supervisor, Milton Cano, can be reached on (703) 308-3959.

The fax phone number for the organization where this application or
proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this
application or proceeding should be directed to the receptionist whose
telephone number is 703-308-0661.



CAROLYN PADEN 8-25-03
PRIMARY EXAMINER
GROUP 1300-1761